



6560 –50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9624-7]

Proposed Reissuance of the NPDES General Permits for Oil and Gas Exploration

Facilities on the Outer Continental Shelf and Contiguous State Waters in the Beaufort Sea and on the Outer Continental Shelf in the Chukchi Sea

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed reissuance of general permits.

SUMMARY: EPA Region 10 proposes to reissue the National Pollutant Discharge Elimination System (NPDES) General Permits for Oil and Gas Exploration Facilities on the Outer Continental Shelf and Contiguous State Waters in the Beaufort Sea (Permit No. AKG-28-2100) and on the Outer Continental Shelf in the Chukchi Sea (Permit No. AKG-28-8100). As proposed, the Beaufort and Chukchi general permits would authorize thirteen types of discharges from facilities engaged in field exploration and drilling activities under the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR Part 425, Subpart A), as authorized by Section 402 of the Clean Water Act (CWA or “the Act”), 33 U.S.C. 1342. STATE CERTIFICATION OF BEAUFORT GENERAL PERMIT: Section 401 of the Act, 33 U.S.C. 1341, requires EPA to seek a certification from the State of Alaska that the conditions of the Beaufort general permit are stringent enough to comply with State water quality standards. EPA obtained a draft certification from the Alaska Department of Environmental Conservation (DEC) on January 10, 2012. EPA intends to seek a final certification from DEC

prior to issuing the final Beaufort general permit. When the State issues a final certification, it may impose more stringent conditions than what is proposed in the Beaufort general permit to ensure compliance with State water quality standards. EPA would then be required to include the more stringent conditions from the State certification in the permit pursuant to Section 401(d) of the Act, 33 U.S.C. 1341(d). This is also notice of the draft CWA Section 401 certification provided by the State of Alaska.

DATES: Comments. The public comment period for the draft Beaufort and Chukchi general permits will be from the date of publication of this Notice until March 30, 2012. Comments must be received or post-marked by no later than midnight Pacific Standard Time on March 30, 2012.

Public Hearings. EPA will hold public hearings on March 13, 2012, in Barrow, Alaska, at the Inupiat Heritage Center, and March 15, 2012, in Anchorage, Alaska, at the Z. J. Loussac Library. Both hearings will begin at 6:00 p.m. and will continue until all testimony is heard or 10:00 p.m., whichever is earlier.

Additionally, EPA will hold two hearings via teleconferences on March 16, 2012, at the following times: 10:00 a.m. – 1:00 p.m., and 2:00 p.m. – 5:00 p.m. Alaska Standard Time. See SUPPLEMENTARY INFORMATION for additional information.

ADDRESSES: You may submit comments by any of the following methods. EPA will consider all comments received during the public comment period prior to making its final decision.

Mail: Send paper copies to Hanh Shaw, Office of Water and Watersheds, Mail Stop OWW-130, 1200 6th Avenue, Suite 900, Seattle, WA 98101-3140.

E-mail: Send electronic copies to r10arcticpermits@epa.gov.

Fax: Fax copies to the attention of Hanh Shaw at (206) 553-0165.

Hand Delivery/Courier: Deliver copies to Hanh Shaw, Office of Water and Watersheds, Mail Stop OWW-130, 1200 6th Avenue, Suite 900, Seattle, WA 98101-3140. Call (206) 553-1200 before delivery to verify business hours.

Viewing and/or Obtaining Copies of Documents. A copy of the draft Beaufort and Chukchi general permits, the fact sheet that fully explains the proposal, and a copy of the State's draft certification for the Beaufort general permit, may be obtained by contacting EPA at 1 (800) 424-4372. Copies of the documents are also available for viewing and downloading at:

<http://yosemite.epa.gov/r10/water.nsf/npdes+permits/arctic-gp>

See SUPPLEMENTARY INFORMATION for other document viewing locations.

FOR FURTHER INFORMATION CONTACT: Hanh Shaw, Office of Water and Watersheds, U.S. Environmental Protection Agency, Region 10, Mail Stop OWW-130, 1200 6th Avenue, Suite 900, Seattle, WA 98101-3140, (206) 553-0171, shaw.hanh@epa.gov.

SUPPLEMENTARY INFORMATION: The currently expired Arctic NPDES General Permit, No. AKG-28-0000 (Arctic GP), was issued by EPA on June 26, 2006. The Arctic GP expired on June 26, 2011 (71 FR 30405). EPA proposes to replace the Arctic GP with two general permits, the Beaufort and Chukchi general permits, renumbered as AKG-28-2100 and AKG-28-8100, respectively. The Arctic GP will remain in effect for those operators that obtained authorization to discharge before the permit expired. Those operators must apply for and obtain coverage under the applicable Beaufort or Chukchi general permit when it is reissued. EPA proposes to make the following major changes to the reissued permits:

- (1) Remove the Hope and Norton Basins from the areas of coverage since they are not on the Bureau of Energy Management's (BOEM) current 2012-2017 leasing plan.
- (2) Eliminate the authorization to discharge non-aqueous drilling fluids and associated drill cuttings (i.e., only discharges of water-based drilling fluids and cuttings are authorized);
- (3) Eliminate the authorization to discharge test fluids;
- (4) Expand the Notice of Intent (NOI) requirements;
- (5) Expand the scope of the environmental monitoring program (EMP) and require it to be implemented at every drilling site for four phases of exploration activity;
- (6) Impose additional EMP requirements if water-based drilling fluids and drill cuttings are authorized to be discharged by EPA;
- (7) Increase the chemical additive inventory and reporting requirement for all discharges, including limitations on chemical additive concentrations;
- (8) Prohibit all discharges to waters that are 5-meters deep or less;
- (9) Limit drilling to 5 wells per lease block, except upon the EPA's review and authorization for discharges from the additional wells;
- (10) Prohibit the discharge of water-based drilling fluids and drill cuttings during active bowhead whale hunts in the Beaufort Sea, unless EPA authorizes the discharge after review of the operator's evaluation of the feasibility of drilling facility storage capacity and land-based disposal alternatives;
- (11) Require an alternatives analysis before authorization is granted for discharge of water-based drilling fluids and drill cuttings, sanitary, and domestic wastes to stable

ice in the Beaufort Sea area of coverage;

- (12) Require screening of certain waste streams for toxicity and conduct whole effluent toxicity (WET) testing if those waste streams exceed a volume discharge threshold and if chemicals are added to the system, or if an initial toxicity screen shows potential toxicity;
- (13) Include cooling water intake structure requirements; and
- (14) Include electronic Discharge Monitoring Report (DMR) requirements.

The Beaufort and Chukchi general permits contain conditions and limitations that conform to the Offshore Subcategory of the Oil and Gas Extraction Point Source Effluent Limitations Guidelines, as well as additional requirements that ensure the discharges will not cause unreasonable degradation of the marine environment, as required by section 403(c) of the Clean Water Act (i.e., the Ocean Discharge Evaluation Criteria), 33 U.S.C. 1343(c).

Public Hearing Locations and Information. The locations, teleconference information, and general agenda for the hearings are:

- (1) March 13, 2012, Inupiat Heritage Center, 5421 North Star Street, Barrow, AK 99723, Teleconference number 1 (866) 299-3188, code 2065536524; 4:00 p.m. – 5:00 p.m. Open House; 6:00 p.m. – 7:00 p.m. Presentation; 7:00 p.m. – 10:00 p.m. Testimony.
- (2) March 15, 2012, Z. J. Loussac Library, 3600 Denali Street, Anchorage, AK 99503; 4:00 p.m. – 5:00 p.m. Open House; 6:00 p.m. – 7:00 p.m. Presentation; 7:00 p.m. – 10:00 p.m. Testimony.
- (3) March 16, 2012; Teleconference number 1 (866) 299-3188, code 2065536524; 10:00 a.m. – 1:00 p.m. and 2:00 p.m. – 5:00 p.m.

Public Hearing Procedures. Public hearings will be conducted in accordance with 40 CFR 124.12 and will provide interested persons with the opportunity to give written and/or oral comments for the official record. The following procedures will be used at the public hearings:

- (1) The presiding officer shall conduct the hearing in a manner which will allow all interested persons wishing to make oral statements an opportunity to do so (however, the presiding officer may inform attendees of any time limits during the opening statement of the hearing);
- (2) Any person may submit written statements or documents for the hearing record;
- (3) The presiding officer may, in his or her discretion, exclude oral testimony if such testimony is overly repetitious of previous testimony or is not relevant to the Beaufort and Chukchi general permits;
- (4) The transcripts of the hearings, together with copies of all submitted statements and documents, shall become a part of the record submitted to the Director of the Office of Water and Watersheds;
- (5) The hearing record shall be left open until the deadline for receipt of comments, specified at the beginning of this Notice, to allow any person enough time to submit additional written statements or to present views or evidence tending to rebut or support testimony presented at the public hearing;
- (6) Hearing statements may be provided orally or in written format. Commenters providing oral testimony are encouraged to provide written statements to ensure accuracy of the record and for use of EPA and other interested persons. Persons wishing to make oral testimony supporting their written comments are encouraged to

give a summary of their points rather than reading lengthy written comments verbatim into the record.

All comments related to the Beaufort and Chukchi general permits received by EPA Region 10 by the deadline for receipt of comments, or presented at the public hearing, will be considered by EPA before taking final action on the general permits.

Document Viewing Locations. The documents may also be viewed at the following locations:

- (1) EPA Region 10 Library, Park Place Building, 1200 6th Avenue, Suite 900, Seattle, WA 98101; (206) 553-1289.
- (2) EPA Region 10, Alaska Operations Office, 222 W 7th Avenue, #19, Room 537, Anchorage, AK 99513; (907) 271-5083.
- (3) DEC Anchorage office, 555 Cordova Street, Anchorage, AK 99501; (907) 269-7235.
- (4) Z. J. Loussac Public Library, 3600 Denali Street, Anchorage, AK 99503; (907) 343-2975.
- (5) North Slope Borough School District Library/Media Center, Pouch 169, 829 Aivak Street, Barrow, AK 99723; (907) 852-5311.

EPA's current administrative records for the proposal are available for review at the EPA Region 10 Office, Park Place Building, 1200 6th Avenue, Suite 900, Seattle, WA 98101, between 9:00 a.m. and 4:00 p.m., Monday through Friday. Contact Hanh Shaw at shaw.hanh@epa.gov or (206) 553-0171.

Oil Spill Requirements. Section 311 of the Act, 33 U.S.C. 1321, prohibits the discharge of oil and hazardous materials in harmful quantities. Discharges authorized under the Beaufort and Chukchi general permits are excluded from the provisions of CWA Section 311, 33 U.S.C. 1321. However, the Beaufort and Chukchi general permits will not preclude the institution of

legal action, or relieve the permittees from any responsibilities, liabilities, or penalties for other unauthorized discharges of oil and hazardous materials, which are covered by Section 311.

Endangered Species Act. Section 7 of the Endangered Species Act (ESA), 16 U.S.C. 1531-1544, requires federal agencies to consult with the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) if their actions have the potential to either beneficially or adversely affect any threatened or endangered species. EPA has determined that the Beaufort and Chukchi general permits are not likely to adversely affect any threatened or endangered species. EPA has initiated consultation with NMFS and USFWS to meet its obligations under the ESA. Biological Evaluations (BE) and the fact sheet for the Beaufort and Chukchi general permits were submitted to NMFS and USFWS for review and concurrence during the public comment period. EPA will obtain a determination from NMFS and USFWS before reissuing the final permits.

Essential Fish Habitat. The Magnuson-Stevens Fishery Conservation and Management Act requires EPA to consult with NMFS when a proposed discharge has the potential to adversely affect an Essential Fish Habitat (EFH). EPA is consulting with NMFS to ensure that the discharges authorized by the Beaufort and Chukchi general permits are not likely to adversely affect an EFH or associated species.

Coastal Zone Management Act. As of July 1, 2011, there is no longer a Coastal Zone Management Act (CZMA) program in Alaska. Consequently, federal agencies are no longer required to provide the State of Alaska with CZMA consistency determinations.

Annex V of MARPOL (73/78 and 33 C.F.R. 155.73). Under Annex V of MARPOL, the U.S. Coast Guard (USCG) has issued final regulations under 33 C.F.R. 151.73 to control the

disposal of garbage and domestic wastes from fixed or floating drilling facilities involved in the exploration of oil and gas resources. These regulations also apply to drilling facilities located in navigable waters of the U.S. or within the 200 mile Exclusive Economic Zone. The Beaufort and Chukchi general permits prohibit the discharge of garbage.

Executive Order 12866. The Office of Management and Budget (OMB) exempts this action from the review requirements of Executive Order 12866 pursuant to Section 6 of that order.

Paperwork Reduction Act. EPA has reviewed the requirements imposed on regulated facilities in the Beaufort and Chukchi general permits and find them consistent with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

Regulatory Flexibility Act. Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., a federal agency must prepare an initial regulatory flexibility analysis “for any proposed rule” for which the agency “is required by section 553 of the Administrative Procedure Act (APA), or any other law, to publish general notice of proposed rulemaking.” The RFA exempts from this requirement any rule that the issuing agency certifies “will not, if promulgated, have a significant economic impact on a substantial number of small entities.” EPA has concluded that NPDES general permits are permits, not rulemakings, under the APA and thus not subject to APA rulemaking requirements or the RFA. Notwithstanding that general permits are not subject to the RFA, EPA has determined that the Beaufort and Chukchi general permits will not have significant impact on a substantial number of small entities. This determination is based on the fact that the regulated companies are not classified as small businesses under the Small Business Administration regulations established at 49 FR 5023 et seq. (February 9, 1984). These facilities are classified as Major Group 13 – Oil and Gas Extraction SIC 1311

Crude Petroleum and Natural Gas.

Authority: This action is taken under the authority of Section 402 of the Clean Water Act as amended, 42 U.S.C. 1342. I hereby provide public notice of the draft Beaufort and Chukchi general permit in accordance with 40 CFR 124.10.

Dated: January 23, 2012.

Michael A. Bussell

Director

Office of Water and Watersheds

Region 10

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